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Notes on the Revenue Act of 1939

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The Revenue Act of 1939

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The purpose of this article is to note the more important provisions of the Revenue Act of 1939, which became law on June 29, 1939. It comprises chiefly amendments to the Internal Revenue Code, which was enacted February 10, 1939 to codify various Internal Revenue laws previously appearing in numerous statutes, including the Revenue Act of 1938. The income tax amendments, except as otherwise noted, apply to taxable years *beginning after December 31, 1939.* No changes were made in tax rates except in the case of the corporation income tax.

Corporation Income Tax Rates

For taxable years beginning after December 31, 1939, the undistributed profits tax principle has been dropped entirely. The corporation taxes imposed by the Revenue Act of 1938 will remain in effect for taxable years beginning prior to January 1, 1940. Under the 1938 Act the corporate tax rate depended on whether the "net income" was more than $25,000. Under the new law the test is whether the "normal-tax net income" is more than $25,000. "Normal-tax net income" is arrived at as follows:

1. *Net income,* as defined in the statute (gross income, less allowable deductions),	$ ....
2. Less, Interest on certain obligations of the United States and Government Corporations, which is included in gross income,	....
3. *Adjusted net income*	$ ....
4. Less, 85 per cent of domestic dividends received, but not in excess of 85 per cent of adjusted net income (item 3),	$ ....
5. *Normal-tax net income*	$ ....

By basing the distinction between large and small corporations on "normal-tax net income" instead of "net income," the "notch" provision of the 1938 Act, applying to corporations with net income slightly more than $25,000, has been simplified.

Under the new law, in the case of both large and small corporations,

the income tax rate is applied to the "normal-tax net income."

Income not more than $25,000

In the case of corporations with "normal-tax net income" of not more than $25,000, the income tax rates will be as follows:

Normal-tax Net Income	*Rates of Tax*
0–$ 5,000	12½ per cent.
$ 5,000–$20,000	14 do.
$20,000–$25,000	16 do.

Income more than $25,000

In the case of corporations with "normal-tax net income" of more than $25,000, the tax will be the lower of the following:

(1) 18 per cent of the normal-tax net income, or

(2) A tax of $3,525 plus 32 per cent of the amount of the normal-tax net income in excess of $25,000.

Special Classes of Corporations

Foreign corporations engaged in trade or business within the United States or having an office or place of business therein will be taxed at 18 per cent on the normal-tax net income, regardless of the amount. Other foreign corporations will be taxed as under prior law, 10 per cent on dividends received (5 per cent in the case of dividends received by Canadian corporations), and 15 per cent on other periodic income.

Banks will be taxed in the same manner as other corporations.

"Mutual investment companies" will be taxed at 18 per cent on "Supplement Q net income," which is the "adjusted net income" less the dividends paid credit (including the consent dividends credit but reduced by partially exempt interest).

Net Loss Carry-Over

The new law allows net losses to be carried forward for two years. Only net losses incurred in taxable years *beginning after December 31, 1938* may be carried forward. The carry-over is not limited to corporations, but in the case of taxpayers other than corporations only net losses attributable to the operation of a trade or business regularly carried on by the taxpayer may be carried forward. A partnership or a common trust fund may not carry forward a net loss but the members of the partnership or the participants in the common trust fund may do so.

In computing the net loss to be carried forward, 100 per cent of domestic dividends received and all partially exempt interest must be included in income. In addition, the following adjustments are required in order to determine what the Committee on Ways and Means refers to as the "economic loss" and what is called in the statute the "net operating loss":

1. Depletion must be computed without reference to discovery value or to percentage depletion;
2. All wholly exempt interest must be included in income, decreased by non-deductible interest incurred to purchase or carry obligations the interest on which is wholly exempt;

3. Long-term capital losses may be deducted only to the extent of the long-term capital gains, and short-term capital losses may be deducted only to the extent of the short-term capital gains, but in making such computations 100 per cent of such gains and losses are taken into account in the case of all taxpayers without regard to the percentages taken into account in determining taxable income of taxpayers other than corporations;
4. In the case of a taxpayer other than a corporation, statutory deductions not attributable to the operation of a trade or business regularly carried on by the taxpayer are deductible only to the extent of the gross income not derived from such trade or business. The deductions and gross income must be computed with the exceptions and limitations in paragraphs 1 to 3 above.

If a net operating loss for, say, 1939 is being carried forward to 1940, there is a further limitation in arriving at what the statute refers to as the "net operating loss deduction." In the case of a corporation, the net operating loss for 1939 must be reduced by any partially exempt interest received in *1940;* by the dividends received credit for *1940* (85 per cent of domestic dividends received, but not in excess of 85 per cent of adjusted net income); and by the exceptions and limitations referred to in paragraphs 1 to 3 above, for the year *1940.* In the case of a taxpayer other than a corporation the net operating loss for 1939 must be reduced by the exceptions and limitations referred to in paragraphs 1 to 3 above, for the year 1940.

Similarly, if a net loss for 1939 is carried forward to 1941 the adjustments referred to in the previous paragraph must be made for the year 1941. In addition, the 1939 loss which may be carried forward to 1941 must be reduced by the net income for 1940, computed with the adjustments referred to in the previous paragraph.

A net loss of one year is, of course, not allowed as a deduction in computing the net loss of a subsequent year. However, if a corporation has a net operating loss in 1939 and 1940 and net income (adjusted) in 1941 and 1942, the 1939 loss may first be applied against the 1941 income, and the excess of the 1940 loss over the 1941 income (*after reduction by the amount of the 1939 loss*) may be carried forward to 1942. For example, assuming that a corporation has a net operating loss of $100,000 in each of the years 1939 and 1940 and a net income (adjusted) of $150,000 for 1941, the 1940 loss which may be carried forward to 1942 is arrived at as follows:

Net operating loss for 1940,		$100,000
Net income (adjusted) for 1941,	$150,000	
Less, Net operating loss for 1939,	100,000	50,000

Balance of 1940 net operating loss which may be carried forward to 1942, subject to 1942 income adjustments referred to in previous paragraphs,	$50,000

Capital Gains and Losses

Non-corporate taxpayers

The new law makes no change in the treatment of capital gains and losses by taxpayers other than corporations.

Corporate taxpayers

In the case of corporations, under prior law capital losses (excluding losses on the sale or exchange of depreciable assets) were deductible only from capital gains plus $2,000. Under the new law, effective only for taxable years beginning after December 31, 1939, long-term capital losses (assets held more than 18 months) will be deductible in full from any income. Short-term capital losses (assets held not more than 18 months) will be deductible only from short-term capital gains, but a net short-term capital loss (in an amount not in excess of the "net income" of the taxable year) may be carried forward and deducted from short-term capital gains in the succeeding taxable year. The "net income" includes 100 per cent of domestic dividends received and all partially exempt interest.

The percentages of capital gain or loss to be taken into account based upon the period the assets are held, in the case of taxpayers other than corporations, do not apply to corporate taxpayers.

Personal holding companies

In the case of personal holding companies, both foreign and domestic, capital losses will be deductible only from capital gains plus $2,000 as under prior law.

Inventories

Under the 1938 Act, tanners and producers and processors of nonferrous metals were permitted to use the "last-in, first-out" inventory method, with certain restrictions. The new law extends this privilege to all taxpayers who satisfy the conditions prescribed in the statute, for taxable years beginning after December 31, 1938.

An application to use the last-in, first-out method must be filed at such time and in such manner as the Commissioner may prescribe and must specify the goods to which the method is to be applied. For example, a taxpayer may apparently specify that the method will be applied only to raw materials not yet processed, or to all raw materials, including raw materials forming part of the work in process and of the finished goods, or to a certain basic raw material, or possibly to the entire inventory.

The taxpayer must establish to

the satisfaction of the Commissioner that he has not used any method other than the last-in, first-out method in determining income for credit purposes, or for the purpose of reports to shareholders, partners, or other proprietors, or to beneficiaries, for any period beginning with or during the first taxable year for which the last-in, first-out method is adopted. For example, if a taxpayer on a calendar year basis issued an interim report for the three months ended March 31, 1939 on a first-in, first-out basis, the Treasury might seek to hold that the taxpayer is not entitled to adopt the last-in, first-out method for the calendar year 1939 but would have to wait until 1940.

If the last-in, first-out method is adopted, the inventories must be priced at cost. The law does not permit the use of the lower of (a) last-in, first-out cost or (b) market. If the lower of cost or market is used, cost must be determined as heretofore, on an identification basis or a first-in, first-out basis. However, a taxpayer may use the lower of last-in, first-out cost or market basis for financial purposes without sacrificing the right to use the last-in, first-out cost basis for tax purposes.

The regulations issued under the 1938 Act and prior Acts provide that, even when inventories are taken at cost:

> Any goods in an inventory which are unsalable at normal prices or unusable in the normal way because of damage, imperfections, shop wear, changes of style, odd or broken lots, or other similar causes, including second-hand goods taken in exchange, should be valued at bona fide selling prices less direct cost of disposition . . . , or, if such goods consist of raw materials or partly finished goods held for use or consumption, they shall be valued upon a reasonable basis, taking into consideration the usability and the condition of the goods, but in no case shall such value be less than the scrap value. . . . (Art. 22 (c)—2; Reg. 101.)

The above regulation will in all probability be continued under the 1939 Act.

Under the last-in, first-out method authorized by the new law, goods in the closing inventory must be treated as being, first, those included in the opening inventory (in the order of acquisition) to the extent thereof, and, second, those acquired in the taxable year. The Report of the Senate Committee on Finance states that:

> Goods acquired in the taxable year may be treated as having been acquired in the order of their acquisition and so valued, or their cost may be averaged, or any other proper method of valuation may be used with respect to such goods, depending on whatever is the proper treatment under the circumstances.

Goods which were included in the opening inventory of the taxable year in which the last-in, first-out method is first used are to be treated as having been acquired at the same time and are to be priced by the average cost method.

If a taxpayer adopts the last-in, first-out method for, say, the calendar year 1939, the inventory of goods (specified in the application) at December 31, 1938 must be priced at cost in determining the taxable income for the year 1938.

If the method is once adopted, it must be adhered to in subsequent years unless the Commissioner authorizes a change. If the taxpayer changes to another method for credit or report purposes, the Commissioner may require a change for tax purposes or may require that the last-in, first-out method be continued for tax purposes.

Basis of Stock Dividends and Stock Rights

The Revenue Acts in effect from 1921 to 1935, inclusive, provided that stock dividends should not be subject to tax. The regulations during this period provided that the tax basis of the old stock should be allocated between the old and the new stock.

In *Koshland v. Helvering,* 298 U. S. 441, and *Helvering v. Gowran,* 302 U. S. 238, the Supreme Court held that certain types of stock dividends constituted income under the Sixteenth Amendment to the Constitution, even though exempted from tax by statute, and that the tax basis of such stock dividends was zero, the tax basis of the old stock remaining undisturbed.

The 1939 Act in substance validates the regulations retroactively and requires the allocation of the tax basis between the old and the new stock. The amendment will not apply if the new stock was included in taxable income, or if any stock was sold and there was a final closing of the taxpayer's case without allocation.

For taxable years beginning after December 31, 1935, any stock dividends which constitute income under the Sixteenth Amendment are taxable under the statute and, accordingly, no allocation of basis is required. If the dividends do not constitute income under the Sixteenth Amendment, the rule of allocation will apply.

In the case of stock rights, for many years the regulations gave taxpayers an option to include the entire proceeds in taxable income. The new law provides that, if a taxpayer exercised this option, the basis of the old stock need not be reduced if the taxpayer has not claimed, prior to June 29, 1939, an allocation by refund claim or otherwise. With this exception, the amendments in the new law applicable to stock dividends are equally applicable to stock rights.

It is further provided that, when there is an allocation of basis to stock dividends or rights, the period the old stock was held shall be included in determining the holding period of the new stock or rights.

Renewal of Indebtedness

The 1938 Act allowed a "divi-

dends paid credit" for amounts used or set aside to retire indebtedness in existence at December 31, 1937. The Committee reports indicated that if the indebtedness was renewed after December 31, 1937, no credit would be allowed for its subsequent retirement. This inequity is remedied by a retroactive amendment providing that "A renewal (however evidenced) of an indebtedness shall be considered an indebtedness."

Corporations with indebtedness still outstanding should consider the desirability of reducing the indebtedness during their taxable year ending prior to January 1, 1940, since thereafter a retirement of indebtedness will not be a factor in the tax computation.

Assumption of Indebtedness

In *U. S. v. Hendler,* 303 U. S. 564, the U. S. Supreme Court decided that when the liabilities of a transferor corporation were assumed and paid by the transferee corporation in a reorganization, the assumption and payment of the indebtedness should be treated as a payment of cash to the transferor corporation, or taxable "boot." The effect was not only to make otherwise tax-free reorganizations partly taxable, but under later laws to exclude many transactions from the definition of a reorganization, as the definition referred to the acquisition by one corporation *solely* for all or a part of its voting stock of a specified portion of the stock or substantially all the properties of another corporation.

To remedy this inequity the reorganization definition is amended to provide that in determining whether the exchange is solely for voting stock the assumption of a liability shall be disregarded. Similarly, the sections of the statute referring to the tax-free exchange of property "solely for stock or securities" are amended to provide in substance that the assumption of a liability shall not be considered as taxable "boot," provided that the assumption of the liability was for a bona fide business purpose and was not for the purpose of avoiding income tax.

Similar amendments are made retroactively to taxable years ending after December 31, 1923, except that in such retroactive amendments the purpose of the transaction is disregarded. It is further provided that the amendments shall not apply to any taxpayer whose tax case was finally closed by a decision of the Board of Tax Appeals or of a Court, which became final before September 27, 1939, or by a closing agreement.

Foreign Tax Credit

A serious inequity crept into the tax law by inadvertence in connection with the computation of the credit for foreign taxes. In order that a United States income tax be collected on all income derived from United States sources, the credit for

foreign taxes was limited to that proportion of the United States tax which the foreign income bore to the "entire net income," and in the case of dividends received from a foreign subsidiary the credit was limited to the proportion of the United States tax which the dividends bore to the "entire net income."

In the Revenue Act of 1934 and subsequent Revenue Acts, in the case of corporations, the credit for domestic dividends received and for partially exempt government interest was made a credit against "net income" instead of a deduction in arriving at "net income." Consequently the amount of a corporation's statutory "entire net income," was often not the amount on which the United States tax was computed. The effect was that a corporate taxpayer did not secure full credit for foreign taxes, even though the foreign tax rate was less than the United States tax rate.

This situation has now been remedied by basing the limitation, in the case of corporations, on "normal-tax net income" instead of on "entire net income." The amendment applies only to taxable years beginning after December 31, 1939; it clearly should have been made retroactive to reflect the Congressional intention when the prior laws were enacted.

The credit for foreign taxes will not be allowed against the surtax imposed on corporations accumulating income to avoid surtax on their shareholders.

Discharge of Indebtedness

For taxable years beginning after December 31, 1938, a corporation will realize no taxable income from the discharge of indebtedness at less than its face value if it is established to the satisfaction of the Commissioner that, at the time of such discharge, the corporation was in an unsound financial condition; or if a Federal agency, authorized to make loans to or to exercise regulatory power over such corporation, certifies to the Commissioner that the corporation was in an unsound financial condition. The indebtedness must be evidenced by a "security," which is defined as "any bond, debenture, note, or certificate, or other evidence of indebtedness, issued by any corporation, in existence on June 1, 1939."

The discharge must occur on or after June 29, 1939 and in a taxable year beginning prior to January 1, 1943. Any unamortized premium will not constitute taxable income and any unamortized discount will not be allowed as a deduction, the unamortized portion in either case being computed as of the first day of the taxable year in which the discharge occurred.

The term "unsound financial condition" would seem to have a broad meaning, and its application will naturally depend upon the circumstances of any particular case. The

House Committee on Ways and Means evidently intended it to be liberally construed, for in its report it stated as follows:

> It is not necessary, for the purposes of section 215, that a corporation must establish that its liabilities exceed its assets or it is unable to meet its current obligations as they fall due. Under the section, if a taxpayer could show the Commissioner that its obligations were selling in a free market at prices substantially below their issue price and below the market price of similar issues of similar businesses, it would be highly indicative of its unsound financial condition.

The tax basis of the corporation's assets must be reduced by the net amount excluded from taxable income. The Commissioner is given authority to prescribe regulations regarding the reduction in the tax basis and the particular properties to which the reduction shall be allocated. In order to secure the benefits of the amendment the taxpayer must file with its return its consent to such regulations.

The Commissioner has issued regulations (Art. 113 (b)-2, Reg. 101) under a somewhat similar provision of the Bankruptcy Act of 1898, as amended, referred to as the Chandler Act. In such regulations it is provided that the reduction be first applied against any specific property (other than inventory or notes or accounts receivable) for the purchase of which the indebtedness was incurred; second, against any specific property (other than inventory or notes or accounts receivable) which secures the indebtedness by lien; thirdly, against all property other than inventory and notes and accounts receivable; and fourthly, against inventory and notes or accounts receivable.

Compensation for Services

If, in a taxable year beginning after December 31, 1938, an individual receives compensation for personal services covering a period of five years or more, the tax on such compensation will not be more than he would have paid if the compensation had been received ratably over the period covered. Not less than 95 per cent of the compensation must have been paid only on completion of the services. There will doubtless be numerous controversies as to whether particular payments are for property rights or personal services rendered, in the case of writers, inventors, etc., which were the classes of individuals intended to be benefited according to the Report of the Senate Committee on Finance.

Pan-American Trade Corporation

A consolidated income tax return will be permitted for a domestic parent corporation engaged in the active conduct of a trade or business within the United States and one or more domestic subsidiaries engaged solely in the active conduct of a

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Tax Rates and Computations

By H. E. Bischoff
(*New York Office*)

The revision in tax rates under the 1939 Act affects corporations only. The new rates apply only to corporate income for taxable years beginning *after* December 31, 1939.

Income Tax on Individuals

The rates imposed by the 1938 Act continue unchanged for individuals.

Normal Rate

The normal income tax rate is 4 per cent.

Surtax Rates

The following table sets forth the surtax rates on individuals.

The last column shows the combined normal and surtax due on the maximum amount of net income shown in each respective bracket.

TAXES ON INCOME OF INDIVIDUALS

Taxable Net Income in Excess of Personal Exemptions	*Surtax Rates*	*Surtax on Maximum Amount in Each Bracket*	*Combined Normal Tax (4%) and Surtax**
First $4,000	None	None	$ 160
$4,000 to 6,000	4 Pct.	$ 80	320
6,000 to 8,000	5	180	500
8,000 to 10,000	6	300	700
10,000 to 12,000	7	440	920
12,000 to 14,000	8	600	1,160
14,000 to 16,000	9	780	1,420
16,000 to 18,000	11	1,000	1,720
18,000 to 20,000	13	1,260	2,060
20,000 to 22,000	15	1,560	2,440
22,000 to 26,000	17	2,240	3,280
26,000 to 32,000	19	3,380	4,660
32,000 to 38,000	21	4,640	6,160
38,000 to 44,000	24	6,080	7,840
44,000 to 50,000	27	7,700	9,700
50,000 to 56,000	31	9,560	11,800
56,000 to 62,000	35	11,660	14,140
62,000 to 68,000	39	14,000	16,720
68,000 to 74,000	43	16,580	19,540
74,000 to 80,000	47	19,400	22,600
80,000 to 90,000	51	24,500	28,100
90,000 to 100,000	55	30,000	34,000
100,000 to 150,000	58	59,000	65,000
150,000 to 200,000	60	89,000	97,000
200,000 to 250,000	62	120,000	130,000
250,000 to 300,000	64	152,000	164,000
300,000 to 400,000	66	218,000	234,000
400,000 to 500,000	68	286,000	306,000
500,000 to 750,000	70	461,000	491,000
750,000 to 1,000,000	72	641,000	681,000
1,000,000 to 2,000,000	73	1,371,000	1,451,000
2,000,000 to 5,000,000	74	3,591,000	3,791,000
Over 5,000,000	75		

* Before applying credit for "Earned Income" or any credits for interest on U. S. obligations, etc., allowed under Section 25.

Exemptions

The personal exemptions allowed citizens and residents are continued as follows:

Single person, or married person not living with spouse........	$1,000
Married person living with spouse; or head of family....	2,500
Credit for dependents (each)...	400

An estate is allowed a personal exemption of $1,000, and a trust an exemption of $100.

Tax on Corporations (1938 Act)

Classes of Corporations

Under the 1938 Act, which remains applicable to corporate income for taxable years beginning or ending in 1939, corporations, other than those in the "special classes," are divided into three classes:

(1) Corporations with net income over $25,000, subject to the "general rule";

(2) Corporations with net income slightly over $25,000, to which the alternative, or so-called "notch," provision applies;

(3) Corporations with net income of not more than $25,000.

Net Income Not Over $25,000

The rates of tax, and the amounts of tax on the maximum amounts of "special class net income" falling in the respective brackets, are as follows:

Amounts of "Special Class Net Income"	*Rates of Tax*	*Amounts of Tax*
Not in excess of $5,000	12½ pct.	$625
$5,000 to $20,000	14 do.	2,100
$20,000 to $25,000	16 do.	800
Total tax on net income of $25,000		$3,525

The average rate on "special class net income" of exactly $25,000 is 14.1 per cent.

Example: Corporation A reports net income of $25,000 for 1939, which includes $500 of interest on U. S. obligations and $1,000 of dividends from domestic corporations. It pays a dividend of $10,000 during the taxable year. The tax would amount to $3,309, as computed below:

Net income..................	$25,000
Less, Interest on U. S. obligations	500
Adjusted net income..........	$24,500
Less, 85 per cent. of $1,000 dividends	850
Special class net income....	$23,650
$5,000 x 12½ pct.	$625
15,000 x 14 do.	2,100
3,650 x 16 do.	584
Total tax	$3,309

The amount of dividends paid by Corporation A has no effect upon its tax.

Net Income Over $25,000

The general rule applies to corporations reporting income of more than $25,000, except that for those falling under the second class noted

above the tax is computed under both the "general rule" and the "notch" provision, and whichever tax is less is applied.

General Rule: Under the "general rule" a tentative tax is calculated at 19 per cent. of the adjusted net income (net income less partially exempt interest included therein). There is then deducted from this tentative tax the sum of:

(a) 16½ per cent. of the 85 per cent. dividends received credit, that is, 14.025 per cent. of the domestic dividends received or of the adjusted net income, whichever is less, and

(b) 2½ per cent. of the dividends paid credit, but not to exceed 2½ per cent. of the adjusted net income.

Example: Corporation B reports adjusted net income of $50,000 for the year 1939, which includes $2,000 of dividends from domestic corporations. The company is entitled to a dividends paid credit of $30,000. The tax under the general rule amounts to $8,469.50 calculated as follows:

$50,000 x 19 pct.		$9,500.00
Less: $2,000 x 85 pct. x 16½ pct.	$280.50	
$30,000 x 2½ pct.	750.00	
		1,030.50
Total tax		$8,469.50

The following table presents the effective rates of tax on adjusted net income less dividends received, and on dividends received from domestic corporations, when the tax is computed under the "general rule." It is assumed for the purposes of this table that the amount of such dividends received does not exceed the adjusted net income.

Percentages of Adjusted Net Income Offset by Dividends Paid Credit	Effective Rates of Tax: Percentages On Adjusted Net Income Less Dividends Received	Effective Rates of Tax: Percentages On Dividends Received from Domestic Corporations
100	16.5	2.475
90	16.75	2.725
80	17.	2.975
70	17.25	3.225
60	17.5	3.475
50	17.75	3.725
40	18.	3.975
30	18.25	4.225
20	18.5	4.475
10	18.75	4.725
None	19.	4.975

Example: The tax on Corporation B is $8,469.50, i. e., $48,000 x .175 ($8,400) plus $2,000 x .03475 ($69.50).

Alternative ("Notch") Provision

The tax under the "notch" provision, which applies to corporations with net income slightly more than $25,000 if the tax computed thereunder is less than the tax under the "general rule," is computed as follows:

First Provision: If the gross income of the corporation does not include any partially exempt interest or any dividends received for which a credit is allowed, a tax on the first $25,000 is computed at the rates applied to Class (3) corporations and will total $3,525. To any excess over $25,000 a rate of 32 per cent. is applied.

Example: Corporation C reports net income of $25,800 in 1939, including no partially exempt interest and no domestic dividends, and is entitled to a dividends paid credit of $10,000 during the taxable year. The lesser tax ($3,781) of the two computations shown below would apply:

"Notch" provision:

Tax on $25,000.............	$3,525
Tax on $800 at 32 pct........	256
Total tax	$3,781

General rule:

$25,800 x 19 pct.	$4,902
Less, 2½ pct. of $10,000 dividends paid credit.....	250
Total tax	$4,652

Second Provision: The second provision under the alternative tax applies to corporations reporting gross income which includes interest and dividends of the kind previously described with reference to the first provision.

To begin with, the net income is divided into two divisions, the first division consisting of $25,000, and the second division consisting of the remainder of the net income.

There is allocated to the first division, until an aggregate of $25,000 has been reached:

(1) The portion of gross income consisting of partially exempt interest on U. S. obligations, etc.;

(2) The portion of gross income consisting of dividends received from domestic corporations; and

(3) Other income sufficient to bring the aggregate up to $25,000.

There is allocated to the second division the excess of net income over $25,000, as follows:

(1) Any remainder of partially exempt interest from U. S. Government bonds, etc., not allocated to the first division;

(2) Any part of income from dividends from domestic corporations not allocated to the first division; and

(3) Any excess of net income not already allocated to either division.

After making the above segregation, the tax is then computed as follows:

(1) A tax under the same method and at the same rates as used with reference to "special class net income," as previously described, is computed on the net income allocated to the first division, as if this division constituted the entire net income of the corporation;

(2) A rate of 12 per cent. is applied to the dividends allocated to the second division:

(3) A rate of 32 per cent. is applied to the remainder of the income allocated to the second division, but not to any exempt interest allocated thereto.

Example: Corporation D reports net income of $27,500 for 1939, including interest of $2,000 on U. S. obligations and dividends of $24,500 from domestic corporations, and is entitled to a dividends paid credit of $14,500. The lesser tax ($931.25) of the two computations shown below would apply:

Net income allocated to first division:

Interest on U. S. obligations	$2,000
Dividends (part of $24,500)	23,000
	$25,000

Net income allocated to second division:

U. S. Interest over $25,000..	None
Dividends (balance of $24,500)	$1,500
Balance of net income......	1,000
	$2,500
Total net income.......	$27,500

Net income allocated to first division		$25,000
Less: Interest on U.S. obligations	$2,000	
85 per cent. of $23,000 dividends received.....	19,550	21,550
Balance		$3,450

Tax on first division balance of $3,450 at rates under Sec. 14 (c):	
$3,450 x 12½ pct...........	$431.25
Tax on items allocated to second division:	
Remainder of dividends, $1,500 x 12 pct...........	180.00
Balance of net income, $1,000 x 32 pct...........	320.00
Total tax	$931.25

The tax computed under the "general rule," which does not apply since it is higher than under the "notch" provision, would amount to $1,046.38, computed as follows:

Net income		$27,500
Less, Interest on U. S. obligations		2,000
Adjusted net income..........		$25,500
$25,500 x 19 pct..............		$4,845.00
Less:		
$24,500 x 16½ pct. x 85 pct.........	$3,436.12	
2½ pct. of dividends paid credit of $14,500	362.50	3,798.62
Total tax		$1,046.38

The following table shows various amounts of adjusted net income for which the tax under the "general rule" and under the "notch" provision is the same. The adjusted net income figures used include no dividends received from domestic corporations. When such adjusted net income is over $25,000 but less than the amounts shown in the table, the "notch" provision applies; when it is greater, the corporation is subject to the "general rule."

Percentage of Adjusted Net Income Offset by Dividends Paid Credit	*Amount of Adjusted Net Income*	*Tax Under Either "General Rule" or "Notch" Provision*
100 Pct......	$28,870	$4,763
90 "	29,344	4,915
80 "	29,833	5,071
70 "	30,338	5,233
60 "	30,862	5,400
50 "	31,403	5,574
40 "	31,964	5,753
30 "	32,545	5,939
20 "	33,148	6,132
10 "	33,773	6,332
None........	34,423	6,540

Special Classes of Corporations

Corporations in bankruptcy and receivership, joint stock land banks, and rental housing corporations regulated or restricted by the Federal Housing Administrator under section 207 (b) (2) of the National Housing Act, are taxed as other cor-

porations, except that when the tax is computed under the "general rule" the tentative tax is reduced by 2½ per cent. of the adjusted net income instead of by 2½ per cent. of the dividends paid credit. In effect, therefore, they are treated as though any net income had been paid out in dividends.

Tax on Corporations (1939 Act)

The revised tax rates under the 1939 Act apply only to corporations with respect to taxable years beginning after December 31, 1939, i. e., the calendar year 1940 or fiscal years beginning in 1940, and thereafter. Under the new law the principle of the surtax on undistributed profits does not apply to taxable years beginning after December 31, 1939.

Classes of Corporations

Under the 1939 Act, corporations other than those in the "special classes" are divided into the same three classes described on page 11 with reference to the 1938 Act, except that "normal-tax net income" and not "net income" is the basis of classification.

Normal-tax Net Income Not Over $25,000

The same rates are applied to normal-tax net income (explained on page 1) as were applicable to "special class net income" under the 1938 Act as described on page 11. These rates apply even if the net income is over $25,000, when the credits allowed bring the normal-tax net income down to $25,000 or less.

Normal-tax Net Income Over $25,000

A corporation reporting normal-tax net income of more than $25,000 is taxed at a flat rate of 18 per cent. of the normal-tax net income unless the alternative or "notch" provision applies.

Example: If Corporation E reports adjusted net income of $50,000 for the year 1940, including $2,000 of dividends from domestic corporations, the tax under the general rule will amount to $8,694, calculated as follows:

Adjusted net income..........	$50,000
Less, $2,000 x 85 pct..........	1,700
Normal-tax net income.......	$48,300
Tax on $48,300 x 18 pct.....	$8,694

Alternative ("Notch") Provision

This applies to corporations with normal-tax net income slightly more than $25,000, if the tax computed thereunder is less than the tax computed under the general rule. The tax is $3,525 plus 32 per cent. of the normal-tax net income in excess of $25,000.

Example: If Corporation F reports normal-tax net income of $28,000 for 1940, the lesser tax ($4,485) of the two computations shown on next page will apply:

Alternative provision:

Tax on $25,000	$3,525
Tax on $3,000 at 32 pct.	960
Total tax	$4,485

General rule:

Tax on $28,000 at 18 pct.	$5,040

On normal-tax net income over $31,964.29 the tax under the general rule is less than under the alternative provision, whereas on amounts less than $31,964.29 the contrary is the case.

Former Special Classes of Corporations

Corporations in bankruptcy or receivership, joint stock land banks, and rental housing corporations are taxed like other corporations for taxable years beginning after December 31, 1939.

Banks, Etc.

Banks, insurance companies, China Trade Act corporations, and corporations in United States possessions are subject to the same rates of tax as other corporations for taxable years beginning after December 31, 1939. Under the 1938 law the rate was 16½ per cent.

Mutual Investment Companies

These companies are taxed at 18 per cent. of Supplement Q net income regardless of the amount.

Foreign Corporations

Foreign corporations engaged in trade or business or having a place of business in the United States are taxed at the rate of 18 per cent., regardless of whether the normal-tax net income is over or under $25,000. Under the 1938 law the rate was 19 per cent.

Surtax on Personal Holding Companies

In addition to the corporation tax previously described herein, under both the 1938 and 1939 Acts there is imposed upon "undistributed Title IA net income" a surtax at the following rates:

Undistributed Title IA Net Income	*Rates of Surtax*
Not in excess of $2,000	65 per cent.
In excess of $2,000	75 per cent.

Surtax on Corporations Improperly Accumulating Surplus

Under both the 1938 and 1939 Acts, this tax, which is in addition to the regular corporation tax, is computed on "undistributed Section 102 net income" at the following rates:

Undistributed Sec. 102 Net Income	*Rates of Surtax*
Not in excess of $100,000	25 per cent.
In excess of $100,000	35 per cent.

Capital Stock Tax

New Declaration of Value

Irrespective of the declared or adjusted declared value used for previous capital stock tax returns, every corporate taxpayer is permitted to make a new declaration of value of its capital stock for the years ending June 30, 1939 and 1940, respectively, provided such

new declared value is higher than the adjusted declared value would be, if arrived at in the usual way.

Rate of Tax

The capital stock tax under the new Act is at the rate of $1 per $1,000 of declared capital stock value, similar to that under the 1938 Act.

Excess-Profits Tax

Rates

The rates in effect under the 1938 Act are retained in the new Act as follows:

6 per cent. of such portion of a corporation's net income for its income tax year (less the credit for dividends received) as is in excess of 10 per cent. and not in excess of 15 per cent. of the adjusted declared value of its capital stock at the close of its preceding income tax year, and

12 per cent. of such portion of a corporation's net income as is in excess of 15 per cent. of the adjusted declared value.

Estate Tax

The estate tax rates imposed under the 1926 Act and the 1932 Act (as amended in 1935) remained unchanged by the 1936, 1938 and 1939 Acts and, therefore, apply to transfers of estates of decedents dying after August 30, 1935 (date of enactment of 1935 Act).

Exemption

A specific exemption of $40,000 is allowed for computing the estate tax under the amended 1932 Act. For the purpose of computing the estate tax under the 1926 law, the exemption remains at $100,000.

Method of Computation

As heretofore, two separate computations are required in order to arrive at the total estate tax, namely, (1) using an exemption of $100,000 and the tax rates under the 1926 Act for the purpose of arriving at a base for computing the maximum credit (80 per cent. of such base) for inheritance and estate taxes paid to any state, territory, the District of Columbia, or any possession of the United States, and (2) using an exemption of $40,000 and the rates under the amended 1932 Act, from which amount there is deducted the tax computed under the 1926 Act (before deducting from the latter the credit for state tax). The amount remaining, after deducting from (1) the credit for state inheritance and estate taxes, is added to (2) to arrive at the total tax.

The table on next page shows the rates applicable under the 1926 and amended 1932 Revenue Acts. Attention is drawn to the fact that the figures shown in the first two columns are after deducting the exemptions applicable under the different laws as stated at the top of the schedule. The amount of tax shown in each bracket is based upon the maximum value of the net estate in such bracket.

Example: Assume that X died

ESTATE TAX RATES

Exemption Under 1926 Law	$100,000
Exemption Under 1932 Law (as amended in 1935)	40,000

Value of Net Estate After Deducting Exemptions as Stated Above	1926 Law Rates of Tax	1926 Law Amounts of Tax	1932 Law (as amended) Rates of Tax	1932 Law (as amended) Amounts of Tax
$ 0 to $ 10,000	1 Pct.	$ 100	2 Pct.	$ 200
10,000 to 20,000	1	200	4	600
20,000 to 30,000	1	300	6	1,200
30,000 to 40,000	1	400	8	2,000
40,000 to 50,000	1	500	10	3,000
50,000 to 70,000	2	900	12	5,400
70,000 to 100,000	2	1,500	14	9,600
100,000 to 200,000	3	4,500	17	26,600
200,000 to 400,000	4	12,500	20	66,600
400,000 to 600,000	5	22,500	23	112,600
600,000 to 800,000	6	34,500	26	164,600
800,000 to 1,000,000	7	48,500	29	222,600
1,000,000 to 1,500,000	8	88,500	32	382,600
1,500,000 to 2,000,000	9	133,500	35	557,600
2,000,000 to 2,500,000	10	183,500	38	747,600
2,500,000 to 3,000,000	11	238,500	41	952,600
3,000,000 to 3,500,000	12	298,500	44	1,172,600
3,500,000 to 4,000,000	13	363,500	47	1,407,600
4,000,000 to 4,500,000	14	433,500	50	1,657,600
4,500,000 to 5,000,000	14	503,500	53	1,922,600
5,000,000 to 6,000,000	15	653,500	56	2,482,600
6,000,000 to 7,000,000	16	813,500	59	3,072,600
7,000,000 to 8,000,000	17	983,500	61	3,682,600
8,000,000 to 9,000,000	18	1,163,500	63	4,312,600
9,000,000 to 10,000,000	19	1,353,500	65	4,962,600
10,000,000 to 20,000,000	20	3,353,500	67	11,662,600
20,000,000 to 50,000,000	20	9,353,500	69	32,362,600
Over 50,000,000	20		70	

June 2, 1939, leaving a net estate (before specific exemptions) of $500,000 and that he is entitled to the maximum credit allowed for state inheritance tax. The total estate tax payable would amount to $70,400, computed as follows:

Tax Computed Under 1926 Act

Net estate	$500,000	
Less, Exemption	100,000	
Net estate after exemption	$400,000	
Tax on $400,000 at 1926 rates	$12,500	
Less, Credit for state inheritance tax, 80 pct. of $12,500	$10,000	
Net tax under 1926 Act		$2,500

Tax Computed Under 1932 Act (as amended in 1935)

Net estate	$500,000	
Less, Exemption	40,000	
Net estate after exemption	$460,000	
Tax on $460,000 at 1932 rates (as amended)	$80,400	
Less, Tax at 1926 rates	12,500	
Additional tax under 1932 Act (as amended)		67,900
Total estate tax		$70,400

Gift Tax

The gift tax rates imposed under the 1932 Act, as revised by the 1935 Act, were not changed by the 1936, 1938 or 1939 Acts.

Effective Date

The present rates apply to gifts made on or after January 1, 1936.

Exemptions

The specific exemption of $40,000 contained in the 1935 Act is continued. The $5,000 exclusion previously allowed for gifts (other than future interest in property) made to any person during any taxable year was reduced to $4,000 beginning January 1, 1939, and the exclusion does not apply to gifts in trust made on or after that date.

Rates

The tax is cumulative and advances to the higher brackets as the total value of all taxable gifts cumulates from year to year. In computing the tax for 1939, the taxable gifts made in 1939 are added to the total of taxable gifts made up to December 31, 1938. A tax at the 1932 rates (as amended) is computed on the grand total. There is then deducted from the tax thus arrived at, a tax computed on the accumulated gifts to December 31,

GIFT TAX RATES

Exemption $40,000

Net Gifts in Excess of Exemption as Stated Above	*Rates of Tax*	*Total Tax*
$ 0 to $10,000	1½ Pct.	$ 150
10,000 to 20,000	3	450
20,000 to 30,000	4½	900
30,000 to 40,000	6	1,500
40,000 to 50,000	7½	2,250
50,000 to 70,000	9	4,050
70,000 to 100,000	10½	7,200
100,000 to 200,000	12¾	19,950
200,000 to 400,000	15	49,950
400,000 to 600,000	17¼	84,450
600,000 to 800,000	19½	123,450
800,000 to 1,000,000	21¾	166,950
1,000,000 to 1,500,000	24	286,950
1,500,000 to 2,000,000	26¼	418,200
2,000,000 to 2,500,000	28½	560,700
2,500,000 to 3,000,000	30¾	714,450
3,000,000 to 3,500,000	33	879,450
3,500,000 to 4,000,000	35¼	1,055,700
4,000,000 to 4,500,000	37½	1,243,200
4,500,000 to 5,000,000	39¾	1,441,950
5,000,000 to 6,000,000	42	1,861,950
6,000,000 to 7,000,000	44¼	2,304,450
7,000,000 to 8,000,000	45¾	2,761,950
8,000,000 to 9,000,000	47¼	3,234,450
9,000,000 to 10,000,000	48¾	3,721,950
10,000,000 to 20,000,000	50¼	8,746,950
20,000,000 to 50,000,000	51¾	24,271,950
Over 50,000,000	52½	

1938, and the difference between the two tax computations is the tax on the 1939 gifts. A similar procedure will be followed in the years following 1939.

The table on the previous page shows the rates under the 1932 Act, as amended in 1935, which are applicable to 1936 and later years. The amounts of tax shown have been computed on the maximum amounts of taxable gifts in the respective brackets.

Example: Assume that from June 7, 1932 (enactment of 1932 Revenue Act) to December 31, 1938, inclusive, Y made net gifts of $140,000, or $100,000 in excess of the $40,000 specific exemption, and that during 1939 he makes further net gifts of $100,000. The tax due on the 1939 gifts would amount to $12,750, computed in the following manner:

Net gifts to December 31, 1938 ($140,000 less $40,000)....	$100,000
Additional net gifts in 1939..	100,000
Total accumulated gifts..	$200,000
Tax on accumulated gifts of $200,000	$19,950
Less, Tax on accumulated gifts of $100,000 to December 31, 1938........	$7,200
Tax on 1939 gifts......	$12,750

Withholding at Source

The requirements with reference to withholding at source are the same under the 1939 Act as under the 1938 Act.

In the case of nonresident alien individuals not engaged in trade or business in the United States, and not having an office or place of business therein, tax is to be withheld on income from United States sources at the rate of 10 per cent., except that the rate is 5 per cent. in the case of a resident of Canada.

In the case of a foreign corporation not engaged in trade or business within the United States, and not having an office or place of business therein, tax is to be withheld at the source at the rate of 15 per cent., except as to dividends, for which the rate is 10 per cent. In the case of dividends paid to Canadian corporations the rate is 5 per cent.

The L. R. B. & M. Journal

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The purpose of this journal is to communicate to every member of the staff and office plans and accomplishments of the firm; to provide a medium for the exchange of suggestions and ideas for improvement; to encourage and maintain a proper spirit of cooperation and interest, and to help in the solution of common problems.

The Revenue Act of 1939

For those who are interested in both gardening and taxation it must seem from the experience of recent years that a new Federal Revenue Act may be counted on annually with just as much certainty as the perennials which appear from year to year in the garden.

For many years accountants have been urging simplification of the tax laws. In the 1922 edition of Colonel Montgomery's tax books he suggested that after enacting a very short and very simple tax law, which should leave broad discretion to the Commissioner of Internal Revenue, we should have a tax holiday of ten years so far as changes, other than in rates, are concerned.

Despite the efforts of the accountants to bring about some simplification in our tax laws—an effort which

seems contrary to their self-interest since they are supposed to benefit from the need for their services brought about by complicated tax laws—but little has as yet been accomplished in this field.

The Secretary of the Treasury, in his testimony before the House Committee on Ways and Means, during its consideration of the 1939 Revenue Act, recommended that the Ways and Means and Appropriations Committees of the House and the Finance and Appropriations Committees of the Senate meet each session as one joint committee on fiscal policy to consider the over-all aspects of the expenditure and revenue programs, the committee to have continuous life for the purpose of actively studying fiscal problems between, as well as during, sessions of Congress. He also recommended that Congress create a small temporary national commission made up of men of ability who command the highest possible public confidence and who will represent the public at large, to propose a plan for eliminating the duplication in taxes imposed by the Federal and State governments.

These are commendable suggestions, but whether they will lead to tangible results remains to be seen. The problem is indeed a difficult one.

One interesting development of the current year in the field of federal taxation has been the enactment of the Internal Revenue Code. The Code was approved by the President on February 10, 1939 and, as stated in the preface thereto, was intended to "contain all the United States statutes of a general and permanent nature relating exclusively to internal revenue, in force on January 2, 1939; also such of the temporary statutes of that description as relate to taxes, the occasion of which may arise after the enactment of the Code. . . ." The Revenue Act of 1939 is therefore in the form of amendments to the Internal Revenue Code.

The legislative enactment of the Internal Revenue Code, under which the Code itself is now actual law rather than merely prima facie evidence thereof, should prove a convenience to courts, lawyers and accountants. The adoption of the Code, however, did not simplify the highly complicated provisions of our federal tax laws, and the work of simplification still remains to be done.

The Revenue Act of 1939, even though it did not effect any material simplification of the federal tax laws, nevertheless did correct a number of glaring inequities by permitting the carrying forward of business losses; by allowing corporations to deduct long-term capital losses in full; and by eliminating the principle of the undistributed profits tax. These changes are all to be commended.

So far as the burden of taxation on industry is concerned, the elimination of the remaining vestige of

the undistributed profits tax effected no amelioration since the basic rate of income tax on corporations was raised to an extent that presumably will offset the elimination of the remaining undistributed profits tax. Those corporations which distributed a large part, or all, of their taxable income, really are subject to higher taxes under the new act than under the 1938 Act.

It cannot be reiterated too often that there is no really effective solution of the tax problem which does not include a radical reduction of governmental expenditures. Some months ago the National Economy League made some constructive suggestions along this line, but they do not appear to have received any serious consideration from either the legislative or executive department of the Federal Government.

The Revenue Act of 1939

(*Continued from page 9*)

trade or business in Central or South America, referred to as Pan-American trade corporations. The parent corporation must own 100 per cent of the capital stock of each of the subsidiaries, and at least 80 per cent of its gross income for the taxable year and at least 90 per cent of the gross income of the subsidiaries must be derived from sources other than royalties, rents, dividends, interest, annuities and gains from the sale or exchange of stock or securities. The law does not specifically exclude intercompany dividends from this computation but it is natural to assume that this is implied in the provision for consolidated return by such corporations. The entire gross income for the taxable year of the subsidiaries must be derived from sources without the United States.

Capital Stock Taxes

Corporations are allowed to declare a new value for capital stock tax purposes for each of the years ending June 30, 1939 and 1940, respectively, provided such new declared value is higher than the adjusted declared value would be, if arrived at in the usual way.

Excise Taxes

The excise taxes on sales and facilities and the stamp taxes, admissions and dues taxes, which would have expired on June 30, 1939 or July 31, 1939, are extended to June 30, 1941. The excise tax on firearms, shells and cartridges is made permanent.

Claims for Refund of A. A. A. Taxes

The period for filing claims for refund of taxes paid under the Agricultural Adjustment Act is extended from July 1, 1937 to January 1, 1940. This applies to the tax on floor stocks at August 1, 1933 and to the processing taxes.

Recent Changes In New York Taxes

By John A. Marik
(*New York Office*)

Before its adjournment on May 20, 1939, the legislature of New York State continued numerous taxes scheduled to expire and made certain revisions in the Tax Law, among which are the following:

Corporation Franchise Tax

For the purpose of the corporation franchise tax, based on net income, interest may be deducted in full to the extent that it relates to bonds or other evidences of indebtedness issued, with stock, pursuant to a bona-fide plan of reorganization effected under the supervision of a court of competent jurisdiction to persons who, prior to such reorganization, were bona-fide creditors of the corporation or its predecessors, and were not stockholders or shareholders thereof. This new provision does not apply to investment trusts. It is an exception to the rule that ninety per cent of interest on indebtedness to stockholders or their immediate families (if in excess of $1,000) is not an allowable deduction.

Personal Income Tax

One of the outstanding changes applies to tax years beginning on or after January 1, 1939, and provides that in the discretion of the Commission, a reasonable addition to a reserve for bad debts may be deducted in computing net income for tax purposes. This new provision, it is believed, will be applied only in the case of a taxpayer keeping his books and making his returns on an accrual basis.

Compensation for personal, military or naval services received after January 1, 1939, by an officer, legislator, judge or employee of the United States or any agency or instrumentality thereof, is now subject to the state tax when the recipient is subject to the state law.

The statutory provision for exempting dividends of personal service corporations from personal income tax has been repealed in its application to taxable years beginning on or after January 1, 1939.

Under the 1938 modification of the law, net capital gains were made subject to a separate computation and tax. Under a recent amendment of the statute, the definition of "capital assets" is amplified to exclude, in addition to stock in trade, land used in trade or business and property subject to depreciation allowance. The meaning of "sale or exchange" in the case of capital assets was clarified to include retirement of stock and stocks which be-

came worthless during the taxable year. These definitions apply now to taxable years beginning on and after October 1, 1937.

Under another amendment of the statute, applicable to returns for taxable years beginning on or after October 1, 1937, a provision is made for the application (against capital gains) of the net capital loss of a partnership by its members or, in the case of a common trust fund, by its participants.

Unincorporated Business Income Tax

For the purpose of the unincorporated business income tax for tax years beginning on and after January 1, 1939, provision is now made for the deduction of the proportionate interest of a partner in the net income from an unincorporated business, provided that such amount is included in computing the net income of such partner in another unincorporated business subject to the tax or is included in net income of a corporation subject to the franchise tax.

New York City Excise Tax on Gross Receipts or Gross Income

In the past, this tax was based wholly upon the gross receipts from ordinary business or the gross income from financial business within the territorial limits of the State of New York. However, many well-informed attorneys have held that, legally, the tax is confined to receipts from business within the territorial limits of the *City* of New York.

Recently, in connection with the returns due June 15, 1939, under Local Law No. 20 of 1938, new regulations designed to increase the tax substantially were issued by the City Comptroller. The new regulations in effect apply the tax in some measure to receipts from interstate commerce. To do indirectly what may not be done directly, the tax officials have devised and included in the form of the return a complicated method of calculating the amount of gross receipts from interstate commerce on which tax is to be paid.

A substantial body of legal opinion supports the proposition that the courts may hold ultimately that the city is without lawful power to tax any part of the gross receipts in interstate commerce on the ground that a tax on such gross receipts by a state or one of its local subdivisions is unconstitutional.

The Administrative Code of the City of New York provides, as a prerequisite to refund, that the tax be paid *under protest,* stating in writing the grounds of the protest. Accordingly, most taxpayers took this necessary step at the time of the payment of the tax in order to be in a position to secure refunds if the courts at a later date nullify this taxation of gross receipts from interstate business. In some cases, taxpayers excluded, in computing

the tax shown by their returns, all receipts derived from interstate business, setting forth in a rider attached to the return the grounds for such exclusion. To avoid penalties under the regulations, it appeared advisable in these cases to fill in the form of schedule for allocation of interstate commerce gross receipts.

The statutory penalties for failure to pay the tax within the prescribed time are ten per cent of the amount of the tax due and, in addition, interest at the rate of one per cent of such tax for each month of delay, or fraction thereof, not including the first month after such return was due. It is obvious, on account of the amount of revenue at stake and because an important federal constitutional question is involved, that a considerable time will necessarily elapse before a decision on this issue can possibly be made by the court of last resort. A claim for refund must be filed within one year after payment of the tax under protest. No official form of claim for refund is provided.

Notes

In a recent poll in connection with the Year Book of New York University, the School of Commerce *Violet,* Colonel Montgomery was voted one of America's leading business men. His picture appeared among those selected in a section entitled "Business Leaders of Today as selected by the Business Leaders of Tomorrow" in the issue of the New York World's Fair 1939 Commerce *Violet.*

Mr. Staub made a quick trip to Zurich, Switzerland, in June to represent the American Institute of Accountants at the Twenty-fifth Anniversary meeting of the Swiss Society of Accountants. As Mr. Staub is of Swiss ancestry, and his father was born near Zurich, though brought to America when but a boy, attendance at this meeting of our professional brethren in Switzerland had an especial sentimental interest for him. He received a warm welcome from the Swiss accountants and spoke at the banquet which formed part of the proceedings. The account of the anniversary celebration, which has since appeared in both French and German in the Society's *Bulletin,* referred in cordial terms to Mr. Staub's representation of the American accountants on that occasion.

He took advantage of the opportunity to see something of the Swiss National Exposition at Zurich which was opened on May 6. It is a purely Swiss affair, no foreign countries having any exhibits. It is exceedingly well designed and set up amid beautiful surroundings on the shores of Lake Zurich. The managements of our New York and San Francisco fairs might well envy the relation of attendance to population of the country which was achieved during the first seven weeks following the opening of the Exposition. Although the total population of Switzerland is only about 4,250,000, the attendance at the Exposition had already reached the 3,000,000 mark by the end of the seventh week, which was at the time of Mr. Staub's visit. The Swiss are proud of their well governed little country and its accomplishments.

Mr. Staub also visited our London and Paris offices and made calls on several clients in Switzerland whose American interests we serve.

At the 1939 annual meeting of The Pennsylvania Institute of Certified Public Accountants, Mr. Fischer was elected President and Mr. Marsh was elected a member of the Committee on Professional Ethics.

Mr. Fischer read a paper entitled "A Bird's Eye View of a Cross

Section of Modern Financial Statements" at the Eastern Four-States Accounting Conference held at Atlantic City in May.

Mr. Metzler has been appointed Chairman of the Philadelphia Chapter Committee on Cooperation with the Bar Association's Committee on Unauthorized Practice of Law, and has also been elected to the Executive Committee of the Philadelphia Chapter of the Pennsylvania Institute of Certified Public Accountants.

Mr. Keast is a member of the Committee on Meetings of the American Institute of Accountants in charge of the plans for the 1939 annual meeting of the Institute to be held at San Francisco on September 17 to 22.

On May 23rd Mr. Bell addressed the Philadelphia Retail Controllers' Association, at a dinner meeting at the Penn Athletic Club, on the subject "Merchandise Control."

Mr. Ives has been elected President of the Georgia Society of Certified Public Accountants.

During April, H. A. Tufel of the New York office spoke before the Greenwich Chapter of the N.A.C.A. on the Revenue Act of 1938, and upon current income tax rulings and decisions.

On May 24 W. H. Davidson of the New York office spoke before the Downtown Textile Credit Group, Inc. on the current federal tax situation.

Mr. Clifford G. Wood of the Rockford office staff has been elected President of the Rockford chapter of the National Association of Cost Accountants.

Mr. John W. Conrad addressed the Downtown Merchants' Association in Rockford, Illinois, at its recent annual meeting, his subject being "Tax Facts."

In the June 15, 1939, issue of the *N.A.C.A. Bulletin,* Dr. McLeod commented on Mr. Russell's activities as follows:

> Don Russell, who has been President of Detroit Chapter for the past two years, has done a splendid job in bringing the Chapter into fourth place at the end of April, but what is more important in our work, he has developed a spirit of friendly cooperation among the officers and members of the Chapter which makes it a real pleasure to mingle with them.

Mr. A. R. Kassander has been appointed Chairman of the Technical Committee on Inventory Methods and Vice Chairman of the Technical Committee on Cost Accounting of The New York State Society of Certified Public Accountants.

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